

**PETITION FOR EXTENSION OF TIME**

Applicants hereby petition for a two (2)-month extension of time to extend the period for response from February 28, 2003 up to and including April 29, 2003. The Commissioner is hereby authorized to charge the required \$205.00 fee for a small entity and any additional fees due with this petition or credit any overpayment to Deposit Account No. 23-1703.

**REMARKS**

Applicants acknowledge and are appreciative of the Examiner's withdrawal of the previous Restriction Requirement of Groups I-IV in the application. In Applicants' prior submission (Paper No. 10), Applicants had provisionally elected, with traverse, the invention of Group I (claims 1-17 and 41-55) directed to a medical device coated with an antibody and a matrix, wherein the medical device is a stent, the matrix is a fullerene and the antibody attachment is covalent, i.e., Group I, 1a, 2e, 3g.

In this Office Action, however, the Examiner has issued a new restriction requirement under 35 U.S.C. §121. The Examiner alleges that Applicants did not traverse the legitimacy of the species requirement, and that in addition to the species election of a medical device, matrix and antibody attachment, Applicant must also elect from the following sub-species:

- 1) Vessel Type
  - a) artery, or
  - b) vein
- 2) Matrix attachment
  - a) noncovalently, or
  - b) covalently

Applicants provisionally elect, with traverse, the sub-species 1a and 2b, wherein the vessel type is an artery and the matrix is covalently attached. Therefore, the provisionally elected species/sub-species is directed to a medical device coated with an antibody and a matrix, wherein the medical device is a stent for insertion into an artery, the matrix is a fullerene attached covalently and the antibody attachment is covalent. Based upon a good faith analysis, Applicants submit that the provisionally elected species/sub-species reads on claims 1-25, 27-39, 41, 43-47, and 49-51.

Upon allowance of a generic claim, Applicants are entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations on an allowed generic claim as provided by 37 C.F.R. §1.141.

#### **TRAVERSAL OF THE SPECIES/SUB-SPECIES REQUIREMENT**

The Examiner alleges that Applicants did not traverse the legitimacy of the species requirement in their response to the Restriction Requirement for Groups I-IV. Applicants submit that the traversal of the restriction for Groups I-IV is tantamount to a traversal of the species requirement. It defeats logic to interpret Applicants' traversal of the restriction requirement for Groups I-IV as an acquiescence of the species requirement.

In this regard, the Examiner's attention is respectfully directed to the bottom of Pages 3-5 of the Office Action, mailed September 10, 2002, where the species requirement is set forth: "[i]f applicant elects Group I [II, III, IV], applicant must also elect *one subspecies* from *each species*..." It is apparent, therefore, that the species requirement is subsumed under the broader restriction to Groups I-IV. In the present case, the species requirement is inseparable from the

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restriction requirement. Accordingly, the traversal of the restriction requirement to Groups I-IV is logically a traversal of species requirement as to any of Groups I-IV.

Applicants provisionally elected the invention of Group I with traverse, which naturally includes a traversal of the species requirement with respect to the provisionally elected Group I. Accordingly, the withdrawal of the restriction requirement for Groups I-IV necessarily results in the withdrawal of the restriction of the species and subspecies requirement.

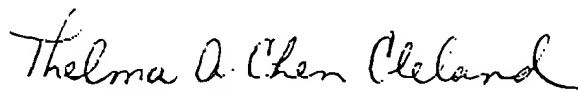
### CONCLUSION

Applicants' traversal of the Restriction Requirement for Groups I-IV was a traversal of the species requirement subsumed under each of Groups I-IV. The Examiner is respectfully requested to withdraw the species/subspecies requirement and to examine all of the pending claims 1-55 in the present application.

The Commissioner is hereby authorized to charge any fees which may be due in connection with this communication to Deposit Account 23-1703.

Dated: April 24, 2003

Respectfully submitted,



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